

10,922 PL-1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194222

CNG 01760

DATE: August 1, 1979

MATTER OF: Bogue Electric Manufacturing Company--
Reconsideration

[Untimely Protest Alleging IFB should Have Required First Article Testing]

DIGEST:

1. Decision is affirmed on reconsideration since protester has not shown that prior decision was based on errors of fact or law.
2. Allegation concerning IFB deficiency filed after bid opening is untimely and not for consideration on merits.

Bogue Electric Manufacturing Company (Bogue) requests reconsideration of our decision in Bogue Electric Manufacturing Company, B-194222, June 18, 1979, where we found Bogue's protest, alleging: (1) nonresponsibility of its competitor; (2) technical deficiency in the solicitation (IFB); and (3) violation of proprietary rights, lacked merit, since it: (1) in part concerned matters which we do not review; (2) in part was untimely filed; and (3) did not present the information and evidence necessary to substantiate its case. We are affirming that decision because Bogue's request has not demonstrated that our prior decision was based on errors of fact or law.

Bogue now argues that the IFB ought to have required first article testing. In our view, this is a variation of Bogue's prior argument that the IFB was technically deficient. In any event, since Bogue's protest of the omission of first article testing first appears in its July 3, 1979, request for reconsideration, it is untimely and not for our consideration on the merits.

Bogue also reiterates its earlier untimely argument that the drawing package accompanying the IFB was incomplete. On this basis, Bogue contends that:

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"It is, therefore, impossible for a DCAS [Defense Contract Administration Services] representative, or any other government representative to review * * * [its competitor's] ability to perform without such drawings."

The agency pointed out in its report that although the IFB did not require a first article test sample, it did require production lot test samples. If Bogue thought this inadequate, it should have protested the matter prior to the December 1, 1978, bid opening in order to be timely, for, as we noted in our prior decision, with regard to Bogue's allegation that the drawing package was deficient, protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 20.3(b)(1) (1979).

Accordingly, our decision of June 18, 1979, is affirmed.

RAK. 114.
Deputy Comptroller General
of the United States